

CHAPTER 65-02

WORKFORCE SAFETY AND INSURANCE ORGANIZATION

65-02-01. Workforce safety and insurance - Director - Division directors. The organization must be maintained for the administration of this title. The board shall appoint the director of the organization. The director is subject to the supervision and direction of the board and serves at the pleasure of the board. The director may appoint the director of any division established by the director. The appointment of a division director must be on a nonpartisan, merit basis.

65-02-01.1. Workforce safety and insurance. The legislative council may delete, where appropriate, "workers compensation bureau", "North Dakota workers compensation bureau", or any derivatives of those terms, which when used in context indicate an intention to refer to those terms, wherever they appear in the North Dakota Century Code or in the supplements thereto and to insert in lieu of each deletion "workforce safety and insurance". Such changes are to be made when any volume or supplement of the North Dakota Century Code is being reprinted. It is the intent of the legislative assembly that workforce safety and insurance be substituted for, shall take any action previously to be taken by, and shall perform any duties previously to be performed by the workers compensation bureau. The legislative council may replace "bureau", where appropriate, wherever the term appears in the North Dakota Century Code or in the supplements of the North Dakota Century Code, with the term "organization". These changes are to be made when any volume or supplement is being reprinted.

65-02-01.2. Organization to establish personnel system. The organization shall establish a system of personnel administration for its employees based upon principles and methods to be determined by the organization and governing position classification, pay administration, transfer of employees, discipline of employees, and removal of employees.

65-02-02. Oath of office. Before commencing to perform the duties of director of the organization, the director shall file an oath of office in the usual form.

65-02-03. Organization - Quorum - Effect of vacancy - Vacancies which must be filled within thirty days. Repealed by S.L. 1989, ch. 295, § 21.

65-02-03.1. Workforce safety and insurance board of directors - Appointment.

1. The board consists of eleven members. The appointment and replacement of the members must ensure that:
 - a. Six board members represent employers in this state which maintain active accounts with the organization, at least one of which must be a participant in the risk management program, at least two of which must be employers with annual premiums greater than twenty-five thousand dollars, at least one of which must be an employer with an annual premium of ten thousand dollars but less than twenty-five thousand dollars, at least one of which must be an employer with an annual premium of less than ten thousand dollars, and at least one employer at large representative. Except for the employer at large representative, each employer representative must be a principal owner, chief executive officer, or chief financial officer of the employer.
 - b. Three members represent employees; at least one member must have received workforce safety and insurance benefits; and at least one member must represent organized labor.
 - c. One member is a member of the North Dakota medical association.
 - d. One member is a member at large who must be a resident of this state and at least twenty-one years of age.

2. Board members shall serve four-year terms, except the initial term of office of the member at large to be appointed on August 1, 2003, expires on December 31, 2006, and the term of office of the medical association member whose term of office became effective January 1, 2003, expires on December 31, 2006. The governor shall make the necessary appointments to ensure the term of office of members begins on January first of each odd-numbered year. Board members may not serve more than three consecutive terms. A departing member representing an employer must be replaced by a member representing an employer, most of whose employees are in a different rate classification than those of the employer represented by the departing member. The governor shall appoint the replacement member for a departing employer representative or medical association representative from a list of three candidates submitted by the board. The board shall interview an employer representative or a medical representative before placing that candidate's name on the list of replacement member candidates submitted to the governor. The governor shall select the replacement member for the departing organized labor employee representative from a list of three names of potential candidates submitted by an organization that is statewide in scope and which through its affiliates embraces a cross section and a majority of organized labor in this state. The governor shall select the replacement member for a departing nonorganized labor employee representative. The governor shall appoint the replacement member for the member at large from a list of three candidates submitted by the board. Vacancies in the membership of the board must be filled for the unexpired term by appointment by the governor as provided in this subsection.

65-02-03.2. Compensation of board members. A board member is entitled to receive compensation as determined by the board for days spent in attendance at board meetings or other business as approved by the board. A board member is entitled to reimbursement for mileage and expenses as provided for state officers.

65-02-03.3. Board - Powers and duties. The board may authorize the organization to transfer moneys between line items within the organization's budget. The board shall:

1. Appoint a director on a nonpartisan, merit basis.
2. Set the compensation of the director.
3. Ensure a proper response to any audit recommendations.
4. Present an annual report to the legislative audit and fiscal review committee. The report must be presented by the chairman of the board and the director.
5. Prepare, with the assistance of the organization, an organization budget, beginning with the July 1, 1999, through June 30, 2001, biennium. The organization shall present the budget to the governor for inclusion in the governor's budget. If the governor makes adjustments to the budget, the board may concur in the adjustments or may present testimony to the appropriations committees of the legislative assembly, requesting amendments to the budget to remove adjustments made by the governor. The deadline for submission of the budget is the same as the deadline for all executive agencies.
6. Assist the organization in formulating policies and discussing problems related to the administration of the organization, while ensuring impartiality and freedom from political influence.
7. Incorporate principles of continuous improvement goalsetting, a procedure for implementing a team-oriented continuous improvement program throughout all operations of the organization. The program must include a number of challenging, measurable goals to ensure the organization maintains focus on improving those areas most important to its primary mission.

8. Adopt internal management rules creating bylaws for the board and relating to the election of a board chairman, formation of committees, replacement of departing members, voting procedures, and other procedural matters.

65-02-04. Chairman. Repealed by S.L. 1989, ch. 295, § 21.

65-02-05. Office space for organization - Expenditures from fund for employees and supplies - Travel. The organization must be provided with office space. The organization, at the expense of the fund, shall provide all necessary equipment, supplies, stationery, and furniture, and all clerical and other help necessary to carry out the provisions of this title. The employees of the organization are entitled to receive from the fund for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty by motor vehicle the same rates in the same manner as other state officials. If travel is by a motor vehicle owned by the state, or by any department or political subdivision thereof, no allowance may be paid for the mileage. Vouchers for travel and other administrative expenses must bear the approval of the organization and the office of management and budget before payment is made therefor. Travel and other administrative expense payments must be made by warrant-check prepared by the office of management and budget drawn upon the state treasurer against the fund. Expenditures made under this section, however, must be within the limitations designated by the legislative assembly in appropriation measures adopted from time to time.

65-02-05.1. Building maintenance account - Continuing appropriation. There is a building maintenance account within the workforce safety and insurance fund, to which the organization shall deposit all building rental proceeds if the organization builds a building that includes rental space for other state entities. The moneys in the account are appropriated on a continuing basis to the organization to pay bond principal and interest payments, operating, maintenance, repair, and payments in lieu of taxes expenses of the building and grounds. This account may be used only for the purposes identified in this section. The organization may either hire or contract for building maintenance and repair services anticipated by this section. The organization shall report to the budget section of the legislative council on a biennial basis on all revenues deposited into this account and expenditures made from the account.

65-02-06. Expenditures by organization from fund - Employment of full-time special assistant attorneys general authorized. The organization may make necessary expenditures to obtain statistical and other information required for the proper enforcement of this title. The salaries and compensation of the director of the organization and of all employees of the organization, and all other authorized expenses of the organization, including the premium on the bond required of the state treasurer under section 65-04-30, must be paid out of the fund. The organization may employ duly appointed special assistant attorneys general and pay from the fund the entire salary of each special assistant attorney general.

65-02-06.1. Allocated loss adjustment expenses - Continuing appropriation - Annual review. Money in the workforce safety and insurance fund is appropriated on a continuing basis for the payment of all allocated loss adjustment expenses experienced by the organization in its administration of this title. In its annual audit and its biennial report, the organization shall include a breakdown of those allocated loss adjustment expenses that reflect the attorney's fees and costs paid to attorneys who represent injured workers, the attorney's fees and costs paid to attorneys with whom it contracts to represent the organization, the amount paid for administrative law judges for hearings, and the court reporter and other legal expenses paid.

65-02-07. Organization to have seal. The organization shall have a seal for the purpose of authentication, whenever authentication is required, upon which seal shall be inscribed the words "Workforce Safety and Insurance - North Dakota - Seal".

65-02-08. Rulemaking power of the organization - Fees prescribed by organization. The organization shall adopt rules necessary to carry out this title. All fees on claims for medical and hospital goods and services provided under this title to an injured employee must be in accordance with schedules of fees adopted by the organization. Before the effective date of any adoption of, or change to, a fee schedule, the organization shall hold a public hearing, which is

not subject to chapter 28-32. The organization shall establish, by administrative rule, costs payable, maximum costs, a reasonable maximum hourly rate, and a maximum fee to compensate an injured employee's attorney for legal services following issuance of an administrative order reducing or denying benefits. The organization shall issue a decision within sixty days of the date when all elements of initial filing or notice of reapplication of claim have been satisfied or a claim for additional benefits over and above benefits previously awarded has been made. Satisfaction of elements of filing must be defined by administrative rule. The organization shall pay an injured employee's attorney's fees and costs from the organization's general fund. Except for an initial determination of compensability, an attorney's fee may not exceed twenty percent of the amount awarded, subject to a maximum fee set by administrative rule. The organization shall pay an attorney's fees and costs when:

1. The employee has prevailed in binding dispute resolution under section 65-02-20.
2. The employee has prevailed after an administrative hearing under chapter 28-32.

An injured employee has prevailed only when an additional benefit, previously denied, is paid. An injured employee does not prevail on a remand for further action or proceedings unless that employee ultimately receives an additional benefit as a result of the remand. This section does not prevent an injured employee or an employer from hiring or paying an attorney; however, the employee's attorney may not seek or obtain costs or attorney's fees from both the organization and the employee relative to the same claim. All disputes relating to payment or denial of an attorney's fees or costs must be submitted to the hearing officer or arbitrator for decision, but a hearing officer or arbitrator may not order that the maximum fees be exceeded.

65-02-08.1. State advisory council - Composition - Compensation - Duties.
Repealed by S.L. 1997, ch. 528, § 7.

65-02-09. General information to public - Biennial report. The organization, from time to time, may publish and distribute among employers and employees general information as to the business transacted by the organization as in its judgment may be useful. The director shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The report must include:

1. A statement of the number of awards made by it.
2. A general statement of the causes of accidents leading to the injuries for which the awards were made.
3. A detailed statement of the disbursements from the fund.
4. A statement of the conditions of the various funds carried by the organization.
5. Any other matters which the organization wishes to call to the attention of the governor, including any recommendation for legislation or otherwise which it may have to make.

65-02-10. Organization to submit budget. Repealed by S.L. 1959, ch. 372, § 117.

65-02-11. Process and procedure - Investigations - Examination of witnesses - Costs. Except as otherwise provided by this title, process and procedure under this title is governed by chapter 28-32. The organization may make investigation as in its judgment is best calculated to ascertain the substantial rights of all the parties. Any member of the organization, and any person specifically designated by the organization may examine witnesses and records, with or without subpoena, examine, investigate, copy, photograph, and take samples at any pertinent location or facility, administer oaths to witnesses, require the attendance of witnesses without fee whenever the testimony is taken at the home, office, or place of work of those witnesses, and generally to do anything necessary to facilitate or promote the efficient administration of this title. The organization may issue a subpoena to compel the attendance of

witnesses and the production of books, papers, correspondence, memoranda, and any other records deemed necessary by the organization. Subpoenas may be enforced by applying to a judge of the district court for an order requiring the attendance of a witness, the production of all documents and objects described in the subpoena, or otherwise enforcing an order. Failure to comply with the order of the district court is contempt as provided in chapter 27-10. The organization shall pay the costs of any medical examination, scientific investigation, medical or expert witness appearance or report, requested or approved by the organization, relating to a claim for benefits, from the organization's general fund.

65-02-12. Hearings by director. Any investigation, inquiry, hearing, or decision, and every order by the director is deemed to be the order or decision of the organization.

65-02-13. Organization may reinsure risks. The organization may reinsure any risk or any part thereof and may enter into agreements of reinsurance.

65-02-13.1. Expenditures by organization for reinsurance and extraterritorial coverage and other states' insurance - Report in annual financial audit. There is appropriated out of the workforce safety and insurance fund, as a continuing appropriation, an amount necessary to allow the organization to establish a program of reinsurance and a program of extraterritorial coverage and other states' insurance. The organization may execute a contract for reinsurance and a contract for extraterritorial coverage and other states' insurance binding on the organization and the contracting party. The term identified in the contract may extend past the end of the biennium in which a contract under this section is executed. The independent annual financial audit report on the organization shall report on any contract executed pursuant to this section.

65-02-14. Organization to aid in rehabilitating persons injured in employment. Repealed by S.L. 1975, ch. 584, § 10.

65-02-15. Workforce safety and insurance binding arbitration. Repealed by S.L. 2003, ch. 562, § 13.

65-02-16. Removal of a panel member. Repealed by S.L. 1993, ch. 614, § 13.

65-02-17. Binding arbitration. Repealed by S.L. 1995, ch. 614, § 6.

65-02-18. Administrative orders - Binding arbitration decisions - Appeals. Repealed by S.L. 1995, ch. 614, § 6.

65-02-19. Organization to contract for administrative services. Repealed by S.L. 1999, ch. 554, § 4.

65-02-20. Organization to establish managed care program. The organization shall establish a managed care program, including utilization review and bill review, to effect the best medical solution for an injured employee in a cost-effective manner upon a finding by the organization that the employee suffered a compensable injury. The program shall operate according to guidelines adopted by the organization and shall provide for medical management of claims within the bounds of workforce safety and insurance law. Information compiled and analysis performed pursuant to a managed care program which relate to patterns of treatment, cost, or outcomes by health care providers are confidential and are not open to public inspection to the extent the information and analysis identify a specific health care provider, except to the specific health care provider, organization employees, or persons rendering assistance to the organization in the administration of this title. If an employee, employer, or medical provider disputes a managed care decision, the employee, employer, or medical provider shall request binding dispute resolution on the decision. The organization shall make rules providing for the procedures for dispute resolution. Dispute resolution under this section is not subject to chapter 28-32 or section 65-01-16. A dispute resolution decision under this section requested by a medical provider concerning payment for medical treatment already provided or a request for diagnostic tests or treatment is not reviewable by any court. A dispute resolution decision under

this section requested by an employee is reviewable by a court only if medical treatment has been denied to the employee. A dispute resolution decision under this section requested by an employer is reviewable by a court only if medical treatment is awarded to the employee. The dispute resolution decision may be reversed only if the court finds that there has been an abuse of discretion in the dispute resolution process. Any person providing binding dispute resolution services under this section is exempt from civil liability relating to the binding dispute resolution process and decision.

65-02-21. Contract for administration of managed care program. The organization may contract for the services of a third-party administrator to implement a managed care program by soliciting bids for administrative services including a description of the program and the services expected of the managed care administrator. The organization shall award an administrative services contract to the bidder who will best serve the interests of the organization and the employees under this title. The contract must be for the period of a biennium. The organization may renew, renegotiate, or rebid a contract based upon contract performance, cost, and the best interests of an employee who suffers a compensable injury.

65-02-21.1. Licensure required for psychologists and physicians performing utilization review. Psychologists making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of psychologist examiners. Physicians making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of medical examiners. This requirement does not apply to psychologists or physicians conducting independent medical examinations under section 65-05-28.

65-02-22. Hearing officer - Qualifications - Location. A hearing officer designated by the organization under chapter 28-32 must be a person licensed to practice law in this state. A hearing officer designated by the organization may not maintain an office within the organization from which the hearing officer conducts daily business. This section does not preclude a hearing held pursuant to chapter 28-32 from being held within the organization.

65-02-23. Workforce safety and insurance fraud unit - Continuing appropriation. The organization shall establish a workforce safety and insurance fraud unit. The organization may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost-effective, to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section 65-04-33 or 65-05-33. The unit shall refer cases of fraud to the organization for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution. Money in the workforce safety and insurance fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. The biennial independent performance evaluation of the organization must evaluate and report on the effectiveness of these expenditures. The organization may establish a process to charge investigative costs against the rate class of an employer being investigated and to credit any recoveries to that rate class.

65-02-24. Immunity from civil liability. A person who notifies the organization or who assists the organization on any matter pertaining to the administration of this title of an alleged violation of section 65-04-33 or 65-05-33, or who provides information in the course of an investigation of an alleged violation of section 65-04-33 or 65-05-33, is not subject to civil liability for that action if the action was in good faith and without malice. At the request of the person who notifies or assists the organization or who provides information to the organization, the organization may not reveal the identity of that person or disclose any information that may reveal the identity of that person to any person other than a representative of or a person rendering assistance to the organization.

65-02-25. Amnesty for certain claims and accounts. After the workforce safety and insurance fraud unit is established, the organization may offer, not more than once every twelve months, a period of amnesty to any person who has willfully made a false claim or false statement or who has willfully misrepresented payroll, to allow that person the opportunity to

close and repay the false claim, to close and repay the claim for which a false statement has been made, or to pay the appropriate premium and penalty on an account for which payroll was misrepresented. The amnesty period may not exceed sixty days. A person who receives amnesty under this section is immune from criminal prosecution relating to those acts for which amnesty is received.

65-02-26. Nondisclosure of investigative information. Any investigative information gathered pursuant to section 65-02-23 is criminal investigative information and may not be disclosed except as provided in section 44-04-18.7. Notwithstanding sections 65-04-15 and 65-05-32, the fraud unit may provide investigative and claim file information to other fraud investigative and law enforcement entities, and gather investigative and claim file information from them.

65-02-27. Office of independent review. The organization's office of independent review is established. The office of independent review is independent of the claims department of the organization and activities administered through the office must be administered in accordance with this title. The office of independent review must provide assistance to a worker who has filed a claim, which may include acting on behalf of a worker who is aggrieved by a decision of the organization, communicating with organization staff regarding claim dispute resolution, and informing a worker of the effect of decisions made by the organization, the worker, or an employer under this title. The office of independent review shall provide assistance to workers, upon request, in cases of constructive denial or after a vocational consultant's report has been issued. The organization shall employ a director of the office of independent review and other personnel determined to be necessary for the administration of the office. A person employed to administer the office of independent review may not act as an attorney for a worker. The organization may not pay attorney's fees to an attorney who represents a worker in a disputed claim before the organization unless the worker has first attempted to resolve the dispute through the office of independent review. A written request for assistance by a worker who contacts the office of independent review within the period for requesting a hearing on an administrative order tolls the time period for requesting a hearing on that order. The period begins upon notice to the worker, sent by regular mail, that the office of independent review's assistance to the worker is completed. The information contained in a file established by the office of independent review on a worker's disputed claim, including communications from a worker, is privileged and may not be released without the worker's permission. Information in the file containing the notes or mental impressions of office of independent review staff is confidential and may not be released by the office of independent review.

65-02-28. Organization claim files - Destruction. If the organization determines that a person who has a claim for injury on file has been deceased for at least ten years, the organization may destroy any claim files for that person. The organization may not destroy any claim file it specifically has been requested not to destroy. The organization shall establish a means for maintaining statistical and identifying information for any claim files destroyed under this section.

65-02-29. Independent audit. Repealed by S.L. 1999, ch. 553, § 8.

65-02-30. Independent performance evaluation - Organization development of performance measurements - Continuing appropriation. Biennially, the director shall request the state auditor to select a firm with extensive expertise in workforce safety and insurance practices and standards to complete a performance evaluation of the functions and operations of the organization during that biennium. This may not be construed to require the firm to be a certified public accounting firm. As determined necessary by the state auditor, but at least once every other biennium, the biennial independent performance evaluation must evaluate departments of the organization to determine whether the organization is providing quality service in an efficient and cost-effective manner; evaluate the effectiveness of safety and loss prevention programs under section 65-03-04; and evaluate the board to determine whether the board is operating within section 65-02-03.3 and within the board's bylaws. The firm's report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The director, the chairman of the board, and a representative

of the firm shall present the evaluation report and any action taken to the legislative council's legislative audit and fiscal review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative session following the performance evaluation. The director shall provide a copy of the performance evaluation report to the state auditor. The organization shall develop and maintain comprehensive, objective performance measurements. These measurements must be evaluated as part of the independent performance evaluation performed under this section. Money in the workforce safety and insurance fund is appropriated on a continuing basis for the payment of the expense of conducting the performance evaluation.

65-02-31. Payments in lieu of taxes by organization. If a building and associated real property is purchased by the organization pursuant to a legislative grant of authority, the organization shall make payments in lieu of property taxes in the manner and according to the conditions and procedures that would apply if the building and property were privately owned.

65-02-32. Assessment of property - Notice to organization. All property subject to valuation must be assessed for the purpose of making the payments under section 65-02-31 in the same manner as other real property in this state is assessed for tax purposes. Before June thirtieth of each year, the county auditor of any county in which property subject to valuation is located shall give written notice to workforce safety and insurance and the tax commissioner of the value placed by the county board of equalization upon each parcel of property subject to valuation in that county.